

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 2, 2007

FRANK T. DALTON v. LORIANN DEUEL

**Appeal from the Circuit Court for Rutherford County
No. 51821 J. Mark Rogers, Judge**

No. M2005-02399-COA-R3-CV - Filed on April 27, 2007

Loriann Deuel appeals an order of the Rutherford County Circuit Court (“the trial court”). The trial court held that it did not have jurisdiction to hear an appeal from an order of the juvenile court domesticating a foreign judgment pertaining to the custody of and visitation with the minor child of the parties. It dismissed Ms. Deuel’s appeal. Before us, she argues that the trial court erred in failing to grant her motion that the appeal be transferred to the Court of Appeals. We conclude that the trial court erred in failing to grant the motion. Accordingly, we vacate the order of the trial court and remand for further proceedings pursuant to T.C.A. § 16-4-108(a)(2) (1994).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Vacated; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Loriann Deuel, appellant, pro se.

Chad A. Massey, Murfreesboro, Tennessee, for appellee, Frank T. Dalton.

OPINION

I.

This litigation was commenced by Frank T. Dalton (“Father”) when he filed a petition in the juvenile court seeking to domesticate a New York order pertaining to the parties’ daughter,¹ Britney Marie Deuel (DOB: December 14, 1993). Mother apparently filed a number of pleadings in the juvenile court. First, she attempted to prevent the domestication of the New York order on various

¹These parties never were married.

grounds. Once the juvenile court domesticated the order, she filed further papers seeking to vacate the order. Her last attempt to vacate the order was heard on April 29, 2005. It was rebuffed by the juvenile court.

On May 9, 2005, Mother filed a notice of appeal in the juvenile court on which she checked a box on a preprinted, fill-in-the-blanks form entitled “Notice of Appeal.” On this form, she indicated that she was appealing to, in the words of the form, “Circuit Civil Court.” After the trial court dismissed her appeal “for lack of jurisdiction,” Mother filed a timely “Motion to Modify an Order” in which she argued, among other things, that the trial court should transfer her appeal to the Court of Appeals. That motion was denied by an order entered September 23, 2005. On October 6, 2005, Mother filed a notice of appeal in the trial court seeking review by the Court of Appeals of this latter order.

II.

The only issue before us is a narrow one, *i.e.*, whether a circuit court has the authority to transfer to the Court of Appeals a case incorrectly appealed to it. This issue raises a pure question of law which we review *de novo* with no presumption of correctness attaching to the trial court’s judgment. ***Southern Constructors, Inc., v. Loudon County Bd. of Educ.***, 58 S.W.3d 706, 710 (Tenn. 2001).

III.

A circuit court’s authority to review decisions of a juvenile court is limited. *See* T.C.A. § 37-1-159(a) (2005). Such jurisdiction only extends to “an unruly child proceeding or dependent and neglect proceeding.” *Id.* “Appeals in all other civil matters” go to the Court of Appeals. T.C.A. § 37-1-159(g). Hence, it is clear that the first notice of appeal in the instant case was incorrectly directed to circuit court because that court lacked subject matter jurisdiction to hear the appeal. We now must decide whether the circuit court should have transferred this case to us.

“The general rule governing transfer is that a court lacking subject matter jurisdiction over a case has no authority to transfer it, unless that authority is specifically conferred by statute, rule, or constitutional provision.” ***Norton v. Everhart***, 895 S.W.2d 317, 319 (Tenn. 1995). *See also Hawkins v. Tennessee Dept. of Correction*, 127 S.W.3d 749, 766 (Tenn. Ct. App. 2002).

Among other authorities,² Ms. Deuel relies upon the case of ***In re Estate of White***, 77 S.W.3d 765 (Tenn. Ct. App. 2001). We find this case dispositive of the issue on appeal. We agree with Ms. Deuel that the ***White*** case supports her argument that the trial court erred when it failed to transfer the appeal from the juvenile court to the Court of Appeals.

²She also relies upon ***State Dept. of Children’s Servs. v. Owens***, 129 S.W.3d 50 (Tenn. 2004). Her reliance is misplaced. The Supreme Court in ***Owens*** expressly declined to address the issue of transfer. *Id.* at 52.

In *White*, the widow of the deceased filed a petition in chancery court seeking appellate review of decisions by a probate court. *Id.* at 767. The chancery court decided that it did not have subject matter jurisdiction of the appeal and dismissed the petition seeking review. *Id.* On appeal to the Court of Appeals, we concluded that the trial court erred in dismissing the petition rather than transferring it to the Court of Appeals. *Id.* at 769. In vacating the order of dismissal of the chancery court, we concluded that T.C.A. § 16-4-108(a)(2) mandated that the case be transferred to the Court of Appeals. *Id.* That statute provides, in pertinent part, as follows:

Any case removed by mistake to the wrong court shall by such court be transferred to the court having jurisdiction thereof, direct.

In *White*, we opined as follows:

[T]he trial court erred by dismissing the portion of Ms. White's petition seeking appellate review of the probate court's decisions. When a case has been appealed to the wrong appellate court, Tenn. Code Ann. § 16-4-108(a)(2) provides that it should be "transferred to the court having jurisdiction thereof." Relying on this statute, the Tennessee Supreme Court vacated a judgment affirming a circuit court's dismissal of an appeal from a probate court and then remanded the case with directions that it be transferred to this court. *In re Estate of Williams*, Madison Law (Order granting Tenn. R. App. P. 11 application and amending judgment) (Tenn. Nov. 18, 1985). Accordingly, on remand, the trial court is directed to enter an order transferring Ms. White's petition for appellate review to this court for further proceedings.

White, 77 S.W.3d at 769.

IV.

In summary, we conclude that the trial court should have transferred this case to the Court of Appeals. This requires that the judgment of the trial court be vacated and that this case be remanded to the trial court for the entry of an appropriate order.

V.

At this juncture, we feel constrained to state that this Middle Section case was first assigned to the Eastern Section of this Court on April 2, 2007. We regret that there was such a long delay in assigning this case to a panel of judges.

VI.

We vacate the dismissal of Ms. Deuel's appeal and remand this case to the trial court for the entry of an order transferring this appeal to the Court of Appeals pursuant to the provisions of T.C.A. § 16-4-108(a)(2). Costs of this appeal are taxed to Frank T. Dalton.

CHARLES D. SUSANO, JR., JUDGE